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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/500,228	09/25/2006	Patrice Henri Lointier	80350-1230	7480
24504 7590 04/12/2011 THOMAS, KAYDEN, HORSTEMEYER & RISLEY, LLP 600 GALLERIA PARKWAY, S.E. STE 1500 ATLANTA, GA 30339-5994				
EXAMINER				
TRUONG, KEVIN THAO				
ART UNIT		PAPER NUMBER		
3734				
MAIL DATE		DELIVERY MODE		
04/12/2011		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/500,228

## Applicant(s)

LOINTIER ET AL.

## Examiner

Kevin T. Truong

## Art Unit

3734

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) 1-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-30 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-943)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Note: This is in response the amendment filed 12/20/2011.

***Election/Restrictions***

1. Applicant's election of Group IV in the reply filed on 01/19/2010 is acknowledged.

Note, the requirement is still deemed proper and is therefore made FINAL (as indicated in Office Action dated 03/10/2010)

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gau et al. (US 5,084,061).

Gau et al. discloses an intra-gastric balloon (20) for treating obesity, for implanting in the stomach of a patient to reduce the volume of the stomach, said balloon comprising a flexible envelope (22) defining a predetermined inside volume, said flexible envelope being made of silicone rubber (col. 4, lines 6-12), though Gau et al. disclose a final thickness of approximately .0006 to .025 inches (.0152 mm to .635 ram)) (Col. 4, lines 6-12). Gau et al. do not disclose the nominal thickness of the envelop is substantially equal to 0.5ram. It would have been obvious to one having ordinary skill in the art at the time the invention was

made to make the nominal thickness of the envelop substantially equal to 0.5ram., since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. In re Boesch, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Gau et al. disclose the claimed invention except for the dimensional tolerance being in the range of 1-20% or 10-16%, it would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize such ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Claims 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gau et al. (US 5,084,061) in view of Thome et al. (US 5,800,486).

Gau et al. disclose making an intragastric balloon from silicone rubber cast on a mandrel (Col. 4, lines 6-7) but do not disclose the method of fabricating an intragastric balloon comprising injecting an elastomer material into a mold in order to obtain a flexible pouch that is to form the envelope of the balloon.

Thome et al. disclose forming a medical balloon 37, by liquid injection molding from a flexible medical grade silicone (Col. 6, lines 49-51). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the injection molding process of Thome et al. to make the intragastric balloon of Gau et al. in order to better control the thickness of the resulting intragastric balloon.

Regarding claim 30, Gau et al. and Thome et al. disclose the invention essentially as claimed except for the mold comprises a top cavity pressed against a bottom cavity with a spherical core positioned between the top and bottom cavity. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use a mold comprising a top cavity pressed against a bottom cavity with a spherical core positioned between the top and bottom cavity in order create a balloon with a wall thickness, and internal hollow volume.

#### ***Response to Arguments***

Applicant's arguments filed 12/20/2011 have been fully considered but they are not persuasive. Examiner is taken the position that it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the dimensional tolerance on the nominal thickness of the balloon envelope lies in the ranges of 1%-20%, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233. In addition, a change in size or thickness is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955). The Examiner disagrees with Applicant's remarks and has maintained the grounds of rejection under 35 U.S.C. 103 (a) as being unpatentable over Gau et al. ('061) and Gau et al. ('061) in view of Thome et al. (US '486) for the same reasons as set forth in the previous office action.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin T. Truong whose telephone number is 571-272-4705. The examiner can normally be reached on Monday-Friday from 8:00 AM to 4:30 PM..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Jackson can be reached on 571-272-4697. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

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